



Missouri's Electric Cooperatives



February 1, 2019

VIA BASECAMP FILING

Chris Nagel, Director, Solid Waste Management Program
Missouri Department of Natural Resources
1101 Riverside Drive
Jefferson City, MO 65102-0176

Re: Coal Combustion Residuals - DRAFT Regulatory Proposals

Dear Mr. Nagel:

The members of the Missouri Energy Development Association (MEDA), the Association of Missouri Electric Cooperative (AMEC), and the Missouri Public Utility Alliance (MPUA) ("Utility Industry Group") have reviewed the three draft chapters of Missouri CCR rules filed on December 31, 2018 and posted on the CCR Basecamp on January 2, 2019. The federal CCR Rule imposes numerous near term compliance requirements that must be met by Utility Industry Group members and we urge the Missouri Department of Natural Resources (MDNR) to expeditiously finalize the rulemaking process establishing a state CCR program and to seek approval of such program by U.S.EPA.

The Utility Industry Group appreciates the concept of using Missouri's existing and federally approved solid waste landfill program as the basis for adapting the federal CCR program (40 CFR part 257) into the state rules. U.S. EPA already approved this approach when it approved Missouri's prior 10 CSR 80 rules and these rules should be acceptable for that reason. We think more needs to be done to ensure a smooth transition and to specify how the state will treat the period between rule effectiveness and U.S. EPA approval of the program. The comments provided herein represent initial impressions and are provided to assist MDNR in its ongoing stakeholder outreach process. Additional comments may be filed by the Group or individual members during the formal public comment period.

As you are aware, the federal CCR rule imposes ongoing compliance and timing obligations that remain in effect until such time as EPA formally approves the state rules. We have provided a number of edits to clarify that with respect to existing CCR surface impoundments, the federal rules will apply during this interim period. (See sections (1)(A), and 18(A) & (C)). For planning purposes, we assume the earliest USEPA could approve Missouri's CCR program would be late

2019 to early 2020, and that the timing of program fees should also be tied to such approval date. The Utility Industry Group agreed to provide funding for the state program with the expectation that MDNR would implement the authority given to it by the General Assembly to establish a state program expeditiously with elements that include but are not limited to a state process to obtain alternative state groundwater standards from MDNR. The rulemaking process, however, has been delayed and a considerable amount of work and technical reports will have now been completed prior to state CCR program approval, arguably reducing the initial level of effort required by the department.

In an effort to move the rulemaking process forward, we suggest some additional revisions to the proposed Chapter 12, applicable to surface impoundments, to eliminate repetitive language and clarify the process for participating owners and operators. We also suggest some changes to the definitions proposed in Chapter 2. Finally, we present some questions about integration and compliance with Missouri statutes and other regulatory programs. Below are our comments and attached is a marked-up version of the regulatory language with specific suggestions and editorial changes to the surface impoundment rule. Note that, where the Chapter 11 and Chapter 12 rules use the same language, we would suggest the same changes to the landfill rule.

1. Clarified applicability to new vs. existing CCR surface impoundments. The proposed regulatory language can be improved by clearly identifying whether various sections applied to new surface impoundments or to both new and existing CCR surface impoundments. The proposed edits are intended to clarify the applicability of certain requirements to new vs. new and existing CCR surface impoundments.

2. Added references to RCRA and state law standards. Where appropriate, we incorporated references to existing standards contained in state statutes (*i.e.* 644.143 RSMo. and 260.242 RSMo.). With the enactment of the federal CCR Rule under RCRA, EPA recognized that CCR units are to be regulated under solid waste requirements and subject to the statutory criteria that such units do not present a "reasonable probability of adverse effects on human health or the environment,"¹ which is the key inquiry for approvability.

¹ 42 U.S.C. §6944(a) ("[u]nless otherwise provided, the criteria in [the CCR Rule] are adopted for determining which CCR landfills and CCR surface impoundments pose a reasonable probability of adverse effects on health or the environment under sections 1008(a)(3) and 4004(a) of the Act.")

3. Eliminated Repetitive Provisions. We deleted provisions setting repetitive requirements or duplicative approval or certifications. As one example, Section 9 in Chapter 12 (the Run-on and Run-off controls) applies only to landfills in 40 CFR part 257 and because Section 7(F) places more appropriate water control requirements on owners or operators of CCR surface impoundments.

4. Consistency. Missouri uses the term “corrective measures” but the rules variously use “remediation” and “corrective action.” To avoid confusion, we marked up the proposal to ensure the rule references consistent terms.

5. Groundwater. MDNR recognizes that the department should have discretion in determining corrective measures appropriate to groundwater that does not pose a risk to actual or potential receptors. The negative, beginning reference in 10 CSR 80-12.011(B)(1)B(II) creates unnecessary confusion and we have provided suggested language to make the focus on protection of drinking water supplies.

6. Enforcement and Self-Certification. The rules specifically recognize the transfer of the CCR units from federal to state jurisdiction. However, since many of the federal rule deadlines and certification requirements will have accrued prior to the effective date of the proposed state rules, we propose adding language to clarify that for existing CCR units, the owner or operator must certify compliance with 40 CFR part 257.

7. Initiate vs. Commence. The terms initiate and commence with respect to closure or corrective measures are used throughout the proposed Chapter 12 and should be clarified. We propose to define “initiate” as contemplating the planning process while “commence” as meaning the beginning of actual field activities.

8. Corrective Action. MDNR has proposed a specific definition for “corrective action” which we are unable to correlate to any other program including the federal CCR Rule. As commonly understood in Missouri, “corrective action” entails a framework for remediation decisions and we suggest MDNR acknowledge the significant technical guidance on the topic already published by the department. In addition, we believe the term “violation” has a legal connotation that should not be used within a definition and instead suggest the following substitute language: *“measures taken to address or remedy environmental conditions resulting from the release or presence of contaminants in the water, land or air...”*

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9. Triggers and Dates. Lastly, many of the triggers contained in the federal CCR rule and adopted into the state CCR program have passed or will pass prior to the effective date. While we understand such language may have been included in the state rule for completeness purposes, such an approach makes little sense with respect to a forward-looking rulemaking. We have suggested language in the General Applicability section and throughout the rule in an effort to provide clarity. We suggest that dates that will have passed be specified as calendar dates (rather than references to such things as “180 days after”). In addition, the rules have a number of different time frames in different sections of the rules for submission of closure plans. MDNR should pick one and make consistent reference throughout the rule.

Sincerely,

Trey Davis

President

Missouri Energy Development Association